IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 218 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIRAO BABURAO THRO' HIS NEIGHBOUR RAJUBHAI S CHAUDHARI
Versus
STATE OF GUJARAT

Appearance:
MS SUBHADRA G PATEL for Petitioner

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 27/03/2000

ORAL JUDGEMENT

1. This is an application for release of the petitioner on parole for 30 days.

2. It is a case of the petitioner that, he was convicted and was sentenced to suffer R.I. for life by

the learned Sessions Judge, Ahmedabad for the offence punishable under section 302 of the Indian Penal Code on 22/8/1984. It is also a case of the petitioner that his mother and young child are both sick. That the mother has been admitted in V.S.Hospital at Ahmedabad, and therefore, his attendance is required.

3. Learned Additional Public Prosecutor appearing for the State strongly opposed this application. It is his case that the petitioner had applied for parole and the same was rejected on 24th of this month. It seems that, parole was rejected on the ground that, the petitioner was likely to commit the breach of public peace and that he might not come back to the jail.

4. On going through the record, it appears that the petitioner had been granted parole on 18 occasions and furlough on 8 occasions. In 1989, he did not return in time, and therefore, he was required to be arrested. In 1996, he was required to be arrested for some another offence.

5. So baring these two lapses on the part of the petitioner, there is no other lapse on his part and lapses are not very recent.

6. So far as illness of the mother of the petitioner is concerned, it is true that V.S.Hospital's certificate says that, she is suffering from cold. It is reported that, she is aged woman and there is nobody to look after her who has been hospitalised. It seems that, wife of the petitioner can look after the mother of the petitioner, but she has also young children to be looked after and one of them is again sick.

7. In the above view of the matter, it appears that, the aforesaid circumstances require consideration, and if, those circumstances are appropriately considered, it can be said that, the petitioner deserves some leniency, particularly, when lapses are not recent. It is, more so, when the petitioner is in jail since many years and he is likely to be released from the jail on the completion of the entire tenure.

8. The petitioner has claimed parole leave for a period of 30 days. However, looking to the sickness and the nature of the sickness of the mother, it would be appropriate to grant parole for a period of 7 days.

9. This petition is, therefore, allowed and the petitioner is directed to be released on parole for a

period of 7 days. Rule is made absolute as indicated above. Direct service is permitted.

****

(pathan)